

assisted in assembling evidence. Claims personnel may not assist any claimant in determining what amount to claim. During claims investigation, every effort should be made to create a cooperative environment that engenders the free exchange of information and evidence. The goal of obtaining sufficient information to make an objective and fair analysis should be paramount. Personal contact with claimants or their representatives is essential both during investigation and before adjudication. When settlement is not feasible, issues in dispute should be clearly identified to facilitate resolution of any reconsideration, appeal or litigation.

(c) *Claims directives and plans*—(1) *Directives*. Two copies of command claims directives will be furnished to the Commander USARCS. ACO directives will be distributed to all DA and DOD commands, installations and activities within the ACO's area of responsibility, with an information copy to the Commander USARCS.

(2) *Disaster and civil preparedness plan*. One copy of all ACOs' disaster or civil disturbance plans or annexes will be furnished to the Commander USARCS.

(d) *Interpretations*. The Commander USARCS will publish written interpretations of this part. Interpretations will have the same force and effect as this part.

(e) *Authority to grant exceptions to and deviations from this part*. If, in particular instances, it is considered to be in the best interests of the government, the Commander USARCS may authorize deviations from this part's specific requirements, except as to matters based on statutes, treaties and international agreements, executive orders, controlling directives of the Attorney General or Comptroller General, or other publications that have the force and effect of law.

(f) *Guidance*. The Commander USARCS may publish bulletins, manuals, handbooks and notes, and a DA Pamphlet that provides guidance to claims authorities on administrative and procedural rules implementing this part. These will be binding on all Army claims personnel.

(g) *Communication*. All claims personnel are authorized to communicate directly with USARCS personnel for

guidance on matters of policy or on matters relating to the implementation of this part.

(h) *Private relief bills*. The issue of a private relief bill is one between a claimant and his or her Congressional representative. There is no established procedure under which the DA sponsors private relief legislation. Claims personnel shall remain neutral in all private relief matters and shall not make any statement that purports to reflect the DA's position on a private relief bill.

§ 536.16 Release of information policies.

(a) *Conflict of interest*. Except as part of their official duties, government personnel are forbidden from advising or representing claimants or from receiving any payment or gratuity for services rendered. They may not accept any share or interest in a claim or assist in its presentation, under penalty of federal criminal law (18 U.S.C. 203 and 205).

(b) *Release of information*. (1) Relevant statutes pertinent to the release of information include the Privacy Act of 1974, 5 U.S.C. 552a and 552b, the Freedom of Information Act (FOIA), 5 U.S.C. 552 and the Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. 1320d through 1320d-8.

(2) It is the policy of USARCS that unclassified attorney work product may be released with or without a request from the claimant or attorney, whenever such release may help settle the claim or avoid unnecessary litigation.

(3) A statutory exemption or privilege may not be waived. Similarly, documents subject to such statutorily required nondisclosure, exemption, or privilege may not be released. Regarding other exemptions and privileges, authorities may waive such exemptions or privileges and direct release of the protected documents, upon balancing all pertinent factors, including finding that release of protected records will not harm the government's interest, will promote settlement of a claim and will avoid unnecessary litigation, or for other good cause.

(4) All requests for records and information made pursuant to the FOIA, 5 U.S.C. 552, the Privacy Act of 1974, 5 U.S.C. 552a, or HIPAA, 42 U.S.C. 1320d, will be processed in accordance with the procedures set forth in AR 25-55 and AR 340-21, respectively as well as 45 CFR Parts 160 and 164, DODD 6025.18-R, this part, and DA Pam 27-162.

(i) Any request for DOD records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of AR 25-55. Requests for DOD records submitted by a claimant or claimant's attorney will be processed under both the FOIA and under the Privacy Act when the request is made by the subject of the records requested and those records are maintained in a system of records. Such requests will be processed under the FOIA time limits and the Privacy Act fee provisions. Withheld information must be exempt from disclosure under both Acts.

(ii) Requests that cite both Acts or neither Act are processed under both Acts, using the FOIA time limits and the Privacy Act fee provisions. For further guidance, see AR 25-55, paragraphs 1-301 and 1-503.

(5) The following records may not be disclosed:

(i) Medical quality assurance records exempt from disclosure pursuant to 10 U.S.C. 1102(a).

(ii) Records exempt from disclosure pursuant to appropriate balancing tests under FOIA exemption (6) (clearly unwarranted invasion of personal privacy), exemption (7)(c) (reasonably constitutes unwarranted invasion of privacy), and law enforcement records (5 U.S.C. § 552(b)) unless requested by the subject of the record.

(iii) Records protected by the Privacy Act.

(iv) Records exempt from disclosure pursuant to FOIA exemption (1) (National security) (5 U.S.C. 552(b)), unless such records have been properly declassified.

(v) Records exempt from disclosure pursuant to the attorney-client privilege under FOIA exemption (5) (5 U.S.C. 552(b)), unless the client consents to the disclosure.

(6) Records within a category for which withholding of the record is discretionary (AR 25-55, paragraph 3-101),

such as exemptions under the deliberative process or attorney work product privileges (exemption (5) (5 U.S.C. 552(b))) may be released when there is no foreseeable harm to government interests in the judgment of the releasing authority.

(7) When it is determined that exempt information should not be released, or a question as to its releaseability exists, forward the request and two copies of the responsive documents to the Commander USARCS. The Commander USARCS, acting on behalf of TJAG (the initial denial authority), may deny release of records processed under the FOIA only. The Commander USARCS will forward to TJAG all such requests processed under both the FOIA and PA. TJAG is the denial authority for Privacy Act requests (AR 340-21, paragraph 1-7i).

(c) *Claims assistance.* In the vicinity of a field exercise, maneuver or disaster, claims personnel may disseminate information on the right to present claims, procedures to be followed, and the names and location of claims officers and the COE repair teams. When the government of a foreign country in which U.S. Armed Forces are stationed has assumed responsibility for the settlement of certain claims against the United States, officials of that country will be furnished as much pertinent information and evidence as security considerations permit.

§ 536.17 Single-service claims responsibility (DODD 5515.8 and DODD 5515.9).

(a) *Assignment for DOD claims.* The army is responsible for processing DOD claims pursuant to DODD 5515.9 (posted on the USARCS Web site; for the address see § 536.2(a)).

(b) *Statutes and agreements.* DOD has assigned single-service responsibility for the settlement of certain claims in certain countries, pursuant to DODD 5515.8 (posted on the USARCS Web site; for the address see § 536.2(a)) under the following statutes and agreements:

- (1) FCA (10 U.S.C. 2734);
- (2) MCA (10 U.S.C. 2733);
- (3) Status of Forces Agreements (10 U.S.C. 2734a and 2734b);
- (4) NATO SOFA (4 U.S.T. 1792, Treaties and International Acts Series